

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 98-0749**

**SALES AND USE TAX**

**FOR TAX PERIODS: 1994-1996**

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**Issue**

**Sales and Use Tax:** Exemption Certificates

**Authority:** IC 6-2.5-2-1 (a), IC 6-8.1-5-1 (b), IC 6-2.5-3-7 (a).

The taxpayer protests the assessment of sales tax on certain unreported sales.

**Statement of Facts**

The taxpayer corporation is a retailer, installer and repairman of restaurant equipment and supplies. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," imposed additional sales and use tax, interest and penalty. The taxpayer protested a portion of the assessment and several hearings were scheduled. Since the taxpayer did not appear for any of the scheduled hearings, the decision was based upon the documentation in the file.

**Sales and Use Tax:** Exemption Certificates

**Discussion**

Indiana imposes a sales tax on the sale of tangible personal property at retail. IC 6-2.5-2-1 (a). All retail transactions are presumed to be taxable and either the seller or purchaser can rebut that presumption. IC 6-2.5-3-7 (a). Retail merchants need not prove nontaxability if they receive and retain a valid exemption certificate from the purchaser. IC 6-2.5-3-7 (b). All department assessments are presumed to be correct and taxpayers bear the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b)

In performing the audit, the department's auditor examined the taxpayer's sales journals, purchase invoices, sales invoices and other workpapers. The auditor determined that the taxpayer collected but failed to remit sales tax for many transactions. The taxpayer argued that it initially billed but never collected sales tax in sales to exempt organizations. The taxpayer alleged that it had exemption certificates to prove that it had no responsibility to collect or remit sales tax on those transactions.

Although the taxpayer was given ample opportunity during the audit, review, and hearing procedures, it never produced any exemption certificates. The taxpayer did not sustain its burden of proving that the sales tax was improperly imposed.

### **Finding**

The taxpayer's protest is denied.

KA/JM/MR--020108